

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR 19-592 WJ

RICK BENAVIDEZ,

Defendant,

**ORDER GRANTING CONTINUANCE OF TRIAL
AND PRETRIAL DEADLINES**

THIS MATTER is before the Court on Defendant's Unopposed Motion to Continue filed October 8, 2020 (Doc. 133). The Court having considered the motion and having considered the holding in *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009), finds that the Defendant has by his motion, created a sufficient record to justify granting the motion to continue. See id., 574 F.3d at 1271 (requiring that the record on a motion to continue contain an explanation of why the mere occurrence of the event identified by the party as necessitating the continuance results in the need for additional time). Additionally, the Court finds that further, pursuant to the relevant factors under 18 U.S.C. §3161(h)(7)(B)(i-iv), defense counsel's late appointment, as well as his client's initial lack of cooperation, requires additional time for counsel to effectively prepare and work with his client to form a coherent strategy for trial. Therefore, all the time from the filing of the motion until the beginning of jury selection in this matter shall be excluded for the purposes of the Speedy Trial Act.

IT IS THEREFORE ORDERED that the Jury Selection/Trial of November 2, 2020 is VACATED. Jury Selection/Trial is reset for **January 19, 2021, at 9:00 a.m.**, on a trailing docket at the United States Courthouse, 333 Lomas Blvd., NW, Cimarron Courtroom, before

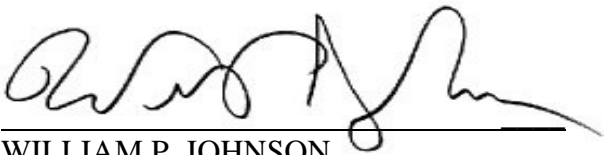
Judge William P. Johnson in Albuquerque, NM.

IT IS FURTHER ORDERED that the substantive motion deadline is hereby extended until **December 7, 2020**.

IT IS FURTHER ORDERED THAT, SO AS TO CONSERVE JUDICIAL RESOURCES, ANY MOTION TO CONTINUE TRIAL MUST BE FILED NO LATER THAN DECEMBER 21, 2020.

IT IS FURTHER ORDERED that pursuant to 18 U.S.C. §3161(h)(7)(A), the Court finds that the ends of justice served by granting the unopposed motion for continuance outweigh the best interest of the public and the defendant in a speedy trial.

IT IS FINALLY ORDERED that counsel shall adhere to the instructions and case management deadlines as set forth in the following attachment, "Preparation for Criminal Trial" (includes guidelines for preparation of proposed jury instructions, JERS Informational Letter, and JERS Attorney Guide).



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

**PLEASE REFER TO THE FOLLOWING
ATTACHMENTS FOR ADDITIONAL DEADLINES AND INFORMATION:**

“Preparation for Criminal Trial” (includes guidelines for preparation of proposed jury instructions, JERS Informational Letter, and JERS Attorney Guide).

OTHER INSTRUCTIONS/MOTION TO CONTINUE TRIAL DEADLINE:

Motions for continuance in criminal cases must be filed in accordance with 18 U.S.C. § 3161(h)(7)(A), specifically setting forth the factual grounds justifying the continuance under the statute. In cases involving multiple defendants, counsel must file a joint motion for continuance with all counsel approving said motion. MOTIONS TO CONTINUE MUST COMPLY WITH THE SPECIFIC REQUIREMENTS SET FORTH IN *UNITED STATES V. TOOMBS*, 574 F.3D 1262 (10TH CIR. 2009). THE MOTION “MUST CONTAIN AN EXPLANATION OF WHY THE MERE OCCURRENCE OF THE EVENT IDENTIFIED BY THE PARTY AS NECESSITATING THE CONTINUANCE RESULTS IN THE NEED FOR ADDITIONAL TIME.” *ID.* AT 1271. MOTIONS CONTAINING SHORT, CONCLUSORY STATEMENTS REGARDING THE REASON A CONTINUANCE IS REQUESTED ARE INSUFFICIENT UNDER *TOOMBS* AND WILL BE SUMMARILY DENIED BY THE COURT.

TRAILING TRIAL DOCKET:

Counsel are referred to the trailing docket of cases as they appear for jury/selection trial on the Public Court Calendar for January 19, 2021. The order in which cases appear on the Court Calendar does not necessarily reflect the order in which cases will be tried.